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EXAMINER

KALINOWSKI, ALEXANDER G

ART UNIT	PAPER NUMBER
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3626

DATE MAILED: 05/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/637,138

Applicant(s)

POVOLNY ET AL.

Examiner

Alexander Kalinowski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 35-91 is/are pending in the application.
- 4a) Of the above claim(s) 37, 58, 78 and 86 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 35, 36, 38-57, 59-77, 79-85 and 87-91 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 35-91 are presented for examination. Applicant filed an amendment on 4/23/2003, canceling claims 1-34 and adding new claims 35-91. Applicant further filed an amendment on 2/23/2005, electing claims 36, 57, 77, and 85 without traverse in response to an election requirement and amending claims 35 and 78. In light of Applicant's cancellation of the claims, the Examiner withdraws the grounds of rejection of claims 1-34. In light of Applicant's election of claims 36, 57, 77, and 85, the Examiner withdraws claims 37, 58, 78 and 86 from consideration. New grounds of rejection of claims 35, 36, 38-57, 59-77, 79-85 and 87-91 are established in the instant office action as set forth in detail below. Since the new grounds of rejection were necessitated by Applicant's amendment to the claims, the rejection of claims 35, 36, 38-57, 59-77, 79-85 and 87-91 is a final rejection of the claims.

Response to Arguments

2. Applicant's arguments with respect to claims 35, 36, 38-57, 59-77, 79-85 and 87-91 have been considered but are moot in view of the new ground(s) of rejection.

Election/Restrictions

3. Applicant's election without traverse of claims 36, 57, 77, and 85 in the reply filed on 2/23/2005 is acknowledged.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 40-41, 54 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification fails to adequately describe the limitations of "the plurality of databases comprise a plurality of heterogeneous, cross-platform databases ... and the heterogeneous, cross-platform databases comprise a plurality of data bases having a plurality of database infrastructure constraints and a plurality of database software constraints". It is unclear from the specification how the claimed invention accomplishes these functions. The Examiner requests that Applicant particularly disclose where in the specification a description supporting this functionality is provided. The Examiner notes that a detailed examination of the specification discloses a brief mention of use of an open database connectivity model (see page 3) in the summary of the invention section, another brief mention of utilizing ODBC or similar tools on page 9 and finally the last paragraph on page 10 described and the first paragraph of page 11 why one would use ODBC or similar tools. It is unclear whether Applicant is using off the shelf tools and products or whether

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Applicant has developed this capability. In addition, the Examiner cannot find any mention of any cross platform functionality in the specification.

6. Claim 65 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims is directed to "the system includes applets in at least one repository ...". It is unclear from the specification how the claimed invention accomplishes this function. The Examiner requests that Applicant particularly disclose where in the specification a description supporting this functionality is provided.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 38 and 59 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 38 recites the limitation "the proprietary interface to the proprietary database" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim. Furthermore, Applicant elected claims 36 and 58 without traverse over claims 37 and 59. Claims 37 and 59 were directed to the limitation of "a proprietary interface to a proprietary database". Since Applicant elected without traverse, the Examiner will not consider the limitation of "the proprietary interface to the

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proprietary database". For purposes of applying prior art, the Examiner will interpret claim 38 to be directed to "without knowing the interface to the at least one database".

9. Claim 56 recites the limitation "one open data base" in line 14 and lines 16-17.

There is insufficient antecedent basis for this limitation in the claim. For purposes of applying prior art, the Examiner will interpret this limitation as one database.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 35, 36, 38-43, 54-57, 59-65, 71-77, 79-85, and 87-91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans, Pat. No. 5,924,074 in view of Halamka et al, "Virtual Consolidation of Boston's Beth Israel and New England Deaconess Hospitals via the World Wide Web (hereinafter Halamka).

As to claims 35, 55, 56, and 91, Evans discloses a method of collecting and presenting patient data (see abstract), the method comprising:

determining the access status of the requestor (col. 15, lines 15-35);

selecting records on the at least one database that satisfy the query and are accessible by the requestor and visible to a selected recipient Fig. 5, col. 6, lines 37-47 and col. 15, lines 15-35); and

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presenting data to the recipient from one or more selected data fields on the at least one database in accordance with one or more objects or templates via a medium determined by the recipient (col. 6, lines 6, lines 47-55).

Evans does not explicitly disclose

querying at least one database from a plurality of databases for patient and provider-specific data by a requestor via a database connectivity module

However, Halamka discloses querying at least one database from a plurality of databases for patient and provider-specific data by a requestor via a database connectivity module (i.e. electronic medical records from heterogeneous data sources)(see abstract, page 1). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitation as disclosed by Halamka within Evans for the motivation of consolidating clinical information from heterogeneous sources (page 1, column 2).

As to claims 36 and 57, Evans does not explicitly disclose The method of Claim 35, wherein the at least one database is a legacy database.

However, Halamka discloses wherein the at least one database is a legacy database (page 1, column 1). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitation as disclosed by Halamka within Evans for the same motivation stated as for claim 35.

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As to claims 38, 59, and 72-73, Evans does not explicitly disclose The method of Claim 35, wherein the querying, the determining, the selecting and the presenting steps can be applied without knowing the interface to the database.

However, Halamka discloses the querying, the determining, the selecting and the presenting steps can be applied without knowing the interface to the database (page 2, column 2 and page 3). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitation as disclosed by Halamka within Evans for the same motivation stated as for claim 35.

As to claims 39 and 60, Evans does not explicitly disclose The method of Claim 38, wherein the data from the at least one database are presented to the recipient without modifying the at least one database and without redesigning the at least one database.

However, Halamka discloses wherein the data from the at least one database are presented to the recipient without modifying the at least one database and without redesigning the at least one database (page 2, column 2 and page 3). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitation as disclosed by Halamka within Evans for the same motivation stated as for claim 35.

As to claims 40-41 and 61-64, Evans does not explicitly disclose The method of Claim 35, wherein the plurality of databases comprise a plurality of heterogeneous,

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cross-platform databases and wherein the at least one database can be selected from any one of the heterogeneous, cross-platform databases further comprise a plurality of data bases having a plurality of database infrastructure constraints and a plurality of database software constraints.

However, Halamka discloses wherein the plurality of databases comprise a plurality of heterogeneous, cross-platform databases and wherein the at least one database can be selected from any one of the heterogeneous, cross-platform databases further comprise a plurality of data bases having a plurality of database infrastructure constraints and a plurality of database software constraints (see abstract, page 2, column 2 and page 3). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitation as disclosed by Halamka within Evans for the same motivation stated as for claim 35

As to claims 42 and 65, Evans discloses The method of Claim 35, wherein the step of presenting the data to the recipient comprises presenting the selected data fields with one or more objects or templates in a form chosen from the group consisting of clinical records, digital images, treatment records, diagnoses, treatment plans, educational information regarding treatment, appointments, recalls, bills, patient payments and charges, insurance payments and charges, no shows, greetings, prescriptions, referrals, and referral reports (Fig. 3, 5, and 19-21).

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As to claim 43, 74-75, 80, 81, 82 and 88, Evans does not explicitly disclose The method of Claim 35, wherein the requestor comprises a provider and the recipient comprises a patient.

However, Evans teaches the requestor is a provider (Evans col. 2, lines 45-50)

Although Evans does not expressly disclose the recipient of the data is a patient, the Examiner takes Official Notice that it was old and well known in the medical arts for a health care provider to produce documentation for patients. This is especially true in the case, such as with Evans, where patient information such as x-rays, prescriptions, appointments, referrals, test results and billing information is stored. For example, the health care provider will provide the patient with a receipt at the end of an examination, a print out of a referred physician's contact information, or a copy of test results or x-rays. It would be obvious to one of ordinary skill in the art at the time of the invention to add the recipient as the patient with the motivation of retrieving the patient record to access the patient data for use in the care of the patient (Evans; col. 3, lines 22-23).

As to claims 54 and 71, Evans does not explicitly disclose The method of Claim 35, wherein the database connectivity module comprises an Open DataBase Connectivity (ODBC) module.

However, Halamka discloses wherein the database connectivity module comprises an Open DataBase Connectivity (ODBC) module. (page 3, col. 1). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention

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to include the aforementioned limitation as disclosed by Halamka within Evans for the same motivation stated as for claim 35.

As to claim 76, 77, 79, 83-85, 87, 89 and 90, Evans and Halamka do not explicitly disclose sending customized correspondence to the patient based on the patient data.

However, the Examiner takes official notice that it was well known in the electronic medical arts to send customized messages to patients based on their conditions or personal data. The motivation was to provide reminders, encouragement or reinforcement to the patient to keep up with treatment or follow through on any recommendations. It would have been obvious to one of ordinary in the art at the time of Applicant's invention to include the aforementioned limitations within Evans and Halamka for the motivation stated above.

12. Claims 44-49 and 66-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans and Halamka as applied to claim 35 and 56 above, and further in view of Bessette, Pat. No. 6,263,330.

As to claims 44 and 66, Evans discloses The method of Claim 35, wherein the step of determining access status of the requestor comprises matching an identifier and a password to values thereof stored in a password repository (col. 14, lines 42-50 and col. 15, lines 15-35)

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Evans and Halamka do not explicitly disclose

wherein the password repository is not associated with the at least one database.

However, Bessette discloses wherein the password repository is not associated with the at least one database (col. 7, lines 4-12 and col. 10, lines 6-18). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitation as disclosed by Bessette within Evans and Halamka for the motivation of increasing system speed and efficiency (col. 10, lines 9-16).

As to claim 45-49 and 67-70, Evans and Halamka do not explicitly disclose The method of Claim 44, wherein the access status is determined without modifying the at least one database.

However, Bessette discloses wherein the access status is determined without modifying the at least one database (col. 7, lines 4-12 and col. 10, lines 6-18). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitation as disclosed by Bessette within Evans and Halamka for the motivation of increasing system speed and efficiency (col. 10, lines 9-16).

13. Claims 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over Evans and Halamka as applied to claim 35 above, and further in view of Ralston et al., (pat. No. 6,389,454)(hereinafter Ralston).

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As to claim 50, Evans discloses The method of Claim 35, wherein data within the at least one database includes schedule of appointments (col. 5, line 55 to col. 6, line 10).

Evans and Halamka do not explicitly disclose

- a) an array of blocks of time set aside for specific procedures, each of the procedures having a unique scheduling code, and
- b) an array of patients requiring a procedure, each of the procedures having a scheduling code as specified in (a); and

wherein a patient requiring a procedure schedules a block of time for the procedure by selecting a block of time having a scheduling code corresponding to the patient's scheduling code.

However, Ralston discloses a) an array of blocks of time set aside for specific procedures, each of the procedures having a unique scheduling code (col. 5, lines 55-60). Ralston also discloses b) an array of patients requiring a procedure, each of the procedures having a scheduling code as specified in (a) (col. 2, lines 55-64 and col. 5, lines 50-60). Finally , Ralston discloses a patient requiring a procedure schedules a block of time for the procedure by selecting a block of time having a scheduling code corresponding to the patient's scheduling code (col. 5, lines 50-66). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitation as disclosed by Ralston within Evans and Halamka for the motivation of ease of scheduling appointments (col. 2, lines 50-55).

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14. Claims 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over Evans and Halamka as applied to claim 35 above, and further in view of Cummings, Jr., Pat. No. 5,301,105 .

As to claim 51, Evans and Halamka do not explicitly disclose The method of Claim 35, further comprising: receiving payment for a health care provider on behalf of a patient; posting payment information into patient accounts on the at least one database; tracking copayments and deductibles for the patient on the databases; and billing copayment and deductible balances to the patient with an explanation of copayments and deductibles to the patient.

However, Evans and Halamka disclose billing and payment records (Evans, col. 1, lines 28-30). Cummings discloses receiving payment for a health care provider on behalf of a patient; posting payment information into patient accounts on the at least one database; tracking copayments and deductibles for the patient on the databases; and billing copayment and deductible balances to the patient with an explanation of copayments and deductibles to the patient (col. 12, lines 22-32 and col. 18, lines 32-35). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitation as disclosed by Cummings within

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Evans and Halamka for the motivation of providing patients with complete and comprehensive health care and payment (col. 1, lines 59-60).

15. Claims 52 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans, Halamka and Cummings as applied to claim 51 above, and further in view of Sackler et al., Pat. No. 5,235,507 (hereinafter Sackler).

As to claim 52, Evans, Halamka and Cummings do not explicitly disclose The method of Claim 51, wherein the step of tracking copayments and deductibles for the patient comprises grouping and aggregating deductibles and copayments by patient families.

However, Sackler discloses the step of tracking copayments and deductibles for the patient comprises grouping and aggregating deductibles and copayments by patient families (col. 2, lines 10-57 and col. 3, lines 20-27). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitation as disclosed by Sackler within Evans and Halamka for the motivation of handling claims for services more efficiently (col. 1, line 43-44).

As to claim 53, Evans, Halamka and Cummings do not explicitly disclose The method of Claim 52, further comprising reporting deductibles and copayments grouped and aggregated by patient families to a family member.

However, Sackler discloses reporting deductibles and copayments grouped and aggregated by patient families to a family member (col. 2, lines 10-57 and col. 3, lines

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20-27). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitation as disclosed by Sackler within Evans and Halamka for the motivation of handling claims for services more efficiently (col. 1, line 43-44).

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. "(Intra) Network based patient records" discloses computerized patient records.

b. "Pioneers assess the role Java can play in health care" discloses health care applications utilizing Java programming.

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Kalinowski whose telephone number is (571) 272-6771. The examiner can normally be reached on Monday to Wednesday, 9:00 am to 6:30 pm..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on (571) 272-6776. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Alexander Kalinowski
Primary Examiner
Art Unit 3626

5/16/05